

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

ROY ALLEN SCOTT v. JIM WORTHINGTON, WARDEN

Appeal from the Criminal Court for Morgan County
No. 9417 E. Eugene Eblen, Judge

No. E2008-02234-CCA-R3-HC - Filed October 16, 2009

The petitioner, Roy Allen Scott, filed a petition for a writ of habeas corpus in the Morgan County Criminal Court, alleging that his convictions are void. The habeas corpus court denied the petition, and the petitioner now appeals. In response, the State filed a motion requesting that this court affirm the habeas corpus court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. After review, we conclude that the petition was properly denied. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Roy Allen Scott, Petros, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On January 3, 2000, the petitioner, Roy Allen Scott, entered in the Wayne County Circuit Court pleas of nolo contendere to charges stemming from several indictments. Specifically, in indictment number 12040, the petitioner pled nolo contendere to resisting arrest, a Class B misdemeanor, for which he received a six-month sentence. On indictment number 12041, the petitioner pled nolo contendere to driving under the influence, fourth offense, a Class E felony, for which he received a two-year sentence. On indictment number 12042, he pled nolo contendere to two counts of reckless endangerment, a Class E felony, and for each conviction he received a two-year sentence. On indictment number 12043, he pled nolo contendere to evading arrest, a Class D felony, for which he received a four-year sentence. On indictment number 12044, he pled nolo contendere to aggravated assault, a Class C felony, for which he received a six-year sentence. On indictment number 12045, he pled nolo contendere to driving on a revoked license, a Class B misdemeanor, and he received a six-month sentence. In indictment number 12192, the petitioner

pled nolo contendere to escape, a Class E felony, and he received a two-year sentence. According to the petitioner's brief, he was in jail in relation to the charges in indictment numbers 12040 through 12045 when he committed the escape for which he was charged in indictment number 12192. The petitioner's sentences for resisting arrest, evading arrest, and driving on a revoked license were to be served concurrently with each other but consecutively to the other sentences. The remaining sentences were ordered to be served consecutively to each other for a total effective sentence of eighteen years.

On June 9, 2008, the petitioner filed a petition for a writ of habeas corpus, arguing that his conviction for escape is void. The petitioner contended that because he committed the offense on November 8, 1999, the trial court impermissibly granted him sentencing credits from May 23, 1999, a date prior to the offense, through January 3, 2000. The petitioner further contended that because the plea agreement provided for the impermissible application of the sentencing credits toward his escape conviction, the plea agreement is thus illegal. Additionally, the petitioner argued that the trial court applied the sentencing credits to his escape conviction and to the other convictions which "had the effect of running the sentences concur[rently]." The State filed a motion to dismiss the petitioner's habeas corpus petition, arguing that the judgments of conviction specifically provide that the sentence for the petitioner's escape conviction is to be served consecutively to the remaining convictions as is mandated by law. See Tenn. Code Ann. § 39-16-605; Tenn. R. Crim. P. 32(3)(B). The habeas corpus court granted the State's motion, finding that the petitioner's petition for habeas corpus relief was not "well-taken."

On appeal, the petitioner challenges the habeas corpus court's ruling, again raising the issues contained in his petition.¹ The State argues that the petitioner's escape sentence is not void. The State maintains that the petitioner has cited no authority to support his argument that the grant of pretrial jail credits to his escape conviction effectively made that sentence concurrent with the remaining sentences. The State also notes that the judgments of conviction specifically provide that the sentence for the escape conviction is to be served consecutively to the remaining sentences. Finally, the State notes that if the petitioner's judgments of conviction erroneously provide for pretrial jail credits, the petitioner should have filed a motion to correct the judgments pursuant to Rule 36 of the Tennessee Rules of Criminal Procedure.

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, § 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, "[s]uch relief is

¹ We note that the petitioner also raises additional issues on appeal. However, this court will not address issues raised for the first time on appeal. See State v. Alvarado, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996); State v. Turner, 919 S.W.2d 346, 356-57 (Tenn. Crim. App. 1995).

available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (citation omitted).

Our examination of the record reveals that the petitioner's judgment of conviction for escape reflects that the sentence is to be served consecutively to all of the remaining sentences. The other judgments of conviction also reflect that the sentence for escape is to be served consecutively to the other sentences. Thus, the judgments of conviction do not reflect facially void sentences. Additionally, as the State correctly notes, there is no case law to support the petitioner's argument that the grant of pretrial jail credits to the escape sentence has "the effect of ordering the [e]scape conviction concur[rent] to all others." Therefore, we conclude that the petitioner has failed to state a claim upon which habeas corpus relief can be granted. Thus, the habeas corpus court correctly dismissed the petition for habeas corpus relief.

Accordingly, the State's motion is granted. The judgment of the habeas corpus court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA McGEE OGLE, JUDGE